

**UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

OMAR TREVOR STEVENSON,

Plaintiff,

v.

**COMMONWEALTH OF PENNSYLVANIA,
ET AL.,**

Defendants.

:
:
:
:
:
:
:
:
:
:
:

CIVIL NO. 3:CV-05-1598

(CHIEF JUDGE VANASKIE)

M E M O R A N D U M

I. INTRODUCTION

Plaintiff, Omar Trevor Stevenson, a prisoner currently confined at the York County Prison, York, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging violations of Fourth Amendment rights in connection with his June 24, 2005, arrest by Spring Township Police Officer Dony Harbaugh and other John Doe York County Police Officers. Named as defendants are the Commonwealth of Pennsylvania, York County Prison Warden Thomas Hogan, the York County Police Department, the Spring Garden Township Police Department, Office Dony Harbaugh, several John Doe Police Officers, the York County Hospital and Dr. Jane Doe of the York County Hospital.

Along with his complaint, plaintiff has submitted an application requesting leave to proceed *in forma pauperis*. Pursuant to 28 U.S.C. § 1915(e)(2), the Court is authorized to

dismiss a complaint brought *in forma pauperis* if it is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. For the reasons that follow, the motion to proceed *in forma pauperis* will be granted and his claims against the Commonwealth of Pennsylvania will be dismissed as legally frivolous. Stevenson will be granted leave to file an amended complaint with respect to his claims against the Spring Garden Township and York County Police Departments, as well as the claims asserted against the York County Hospital and Dr. Jane Doe for alleged deliberate indifference to serious medical needs, the claims asserted against Officer Harbaugh and Warden Hogan in connection with the execution of a search warrant, and the malicious prosecution claim. The remainder of Stevenson's Fourth Amendment claims of false arrest, false imprisonment, unlawful search, excessive force and unlawful seizure may proceed.

II. BACKGROUND

According to a Probable Cause Affidavit supplied by Stevenson in connection with his complaint, on June 24, 2005, at approximately 9:47 p.m., Officer Dony Harbaugh of the Spring Garden Township Police Department was called to the Quick 6 Beer Mart on the report of an armed robbery. (Dkt. Entry 9.) An off duty police officer who was in the store during the robbery reported that two black males had just robbed the store at gunpoint and then fled in a car driven by a third black male. The off duty officer provided the license number of the getaway vehicle, which was later located by a York Area Regional Police officer. After a

pursuit, the vehicle was stopped and all three occupants (including Plaintiff) fled on foot but were eventually arrested and taken into custody.

In his Complaint, Stevenson alleges that Officer Harbaugh and ten (10) John Doe officers of the York County Police Department beat him (and his co-defendants, Murray and Sanchez) when arresting him and charging him with robbery, criminal conspiracy, theft by unlawful taking, receiving stolen property, simple assault, recklessly endangering another person and false identification to law enforcement. (Dkt. Entry 1.) He was then taken to the York County Hospital Emergency room to be treated for injuries received during the assault: a concussion; bruises on his head, neck and ribs; and a gash on his right hand. (Id.) He was examined by Dr. John Doe and Nurse Jane Doe.¹ He was given a tetanus shot and bandaged. He was advised that the gash on his hand did not need stitches. (Id.) He was then released to the custody of the Spring Garden Township Police Department. On June 25, 2005, Stevenson was given a video arraignment on various criminal charges before the Honorable District Justice Thomas.

Plaintiff was then transported to the York County Prison by Harbaugh and John Doe defendants. He was seen by Nurse Loop and prescribed Tylenol for a period of seven (7)

¹Although the caption for the Complaint identifies a "Dr. Jane Doe" as a Defendant, the body of the Complaint refers to a "Dr. John Doe" and a "Nurse Jane Doe." Plaintiff's failure to identify alleged participants in the purported wrongs complicates analysis of the Complaint. Plaintiff should attempt to identify those he claims abridged his constitutional rights.

days. He was placed under “medical watch supervision” in the institution’s segregated housing unit and monitored every hour due to his injuries. (Id.) On June 27, 2005, a York County Prison physician medically cleared Stevenson and released him to general population. On July 3, 2005, Plaintiff was placed on a maximum security block where he suffered from continued pain from his injuries as well as nightmares and sleeplessness due to the alleged assault. (Id.) The following day Plaintiff awoke in the early morning hours due to unbearable pain in his right hand. He was immediately given ibuprofen for his pain and blood work was drawn. He was then informed that the gash on his right hand was infected and “that the infection has spread to his bone.” (Id.) He was prescribed antibiotics for a period of fourteen (14) days. The next day Plaintiff reported to a John Doe York County Correctional Officer that he found blood stains on his sheet, left eyelid and forehead. He was again seen by the medical staff, and after a brief exam, “the cause for bleeding was undetermined.” (Id.) Plaintiff then submitted a medical request slip to see a “mental doctor” regarding his nightmares and other problems as a result of the alleged assault. (Id.)

After viewing the store’s digital surveillance recording of the robbery, and interviewing eye witnesses, Officer Harbaugh determined that Plaintiff Stevenson had been in the store during the robbery and held a gun to the head of the store clerk. (Dkt. Entry 9.) In the course of executing a search warrant of the getaway car, law enforcement officers found blood, money from the store, a mask, and a ball-cap. Based on these facts Officer Harbaugh

formulated an affidavit of probable cause to support his request for a search warrant to be granted for a blood sample from Plaintiff as well as for his clothing worn at the time of the robbery that had been secured in the York County Prison property room. (Id.) On July 6, 2005, a Magistrate Judge, after finding probable cause, issued the search warrant. (Id.) Upon Officer Harbaugh's arrival at the prison that day, Plaintiff was advised by York County Prison Warden, Thomas Hogan, that he had to comply with the search warrant or face disciplinary action. (Dkt. Entry 1.) Stevenson was not given a copy of the Warrant or Affidavit of Probable Cause. Plaintiff requested the presence of an attorney while the officers obtained his personal belongings, but this request was denied by defendants. (Id.)

Stevenson seeks monetary damages from each of the defendants .

III. STANDARD OF REVIEW

A complaint filed *in forma pauperis* may be dismissed if it is determined that the action is frivolous, malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(B). In applying these statutory screening requirements, a court employs the standard used to analyze motions to dismiss under Fed. R. Civ. P. 12(b)(6). See Eline v Milore, No. Civ.A. 3:05-1088, 2005 WL 1429845 at *1(M.D. Pa. 2005). Thus, the truth of the plaintiff's factual allegations is assumed and viewed in the light most favorable to plaintiff. Gibson v. Superintendent of N.J. Dep't. of Law & Pub. Safety-Division, 411 F.3d 427, 431 (3d.

Cir.2005). The court must decide “whether under any reasonable reading of the pleadings, plaintiff may be entitled to relief.” Simon v. Cebrick, 53 F.3d 17, 19 (3d Cir. 1995). *Pro se* pleadings are to be construed liberally, Haines v. Kerner, 404 U.S. 519, 520 (1972), and *pro se* litigants are to be granted leave to file a curative amended complaint “even when a plaintiff does not seek leave to amend,” unless such an amendment would be inequitable or futile. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). However, a complaint that sets forth facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. Grayson v. Mayview State Hospital, 293 F.3d 103, 106 (3d Cir. 2002).

IV. DISCUSSION

A. Claims against York County Hospital and Dr. Jane Doe.

Stevenson was taken to the York County Hospital after his arrest and treated by a Dr. John Doe for a series of injuries. His complaint seeks recovery from a “Dr. Jane Doe” and the York County Hospital, apparently for deliberate indifference to his serious medical needs.

To state a viable § 1983 claim, Plaintiff must establish (1) that the alleged wrongful conduct was committed by a “person” acting under color of state law, and (2) that the conduct deprived the Plaintiff of a right, privilege, or immunity security by the Constitution or laws of the United States. Nicini v. Morra, 212 F.3d 798, 806 (3d Cir. 2000). The complaint does not plead any facts to indicate that either the York County Hospital or Dr. Jane Doe are state employees or act under color of state law in providing health care services. Accordingly,

he has not presented a viable civil rights claim against them. See Carver v. Pylar, 115 Fed. Appx. 532, 538 (3d Cir. 2004), citing Pino v. Higgs, 75 F.3d 1461, 1466-67 (10th Cir.1996) (holding that a private emergency room physician was not acting under color of state law for purposes of a § 1983 action when he examined, detained and certified plaintiff for transport under New Mexico's commitment statute); see also, Nicastro v. Frankford Hospital, No. Civ. A. 03-CV-3937, 2004 WL 86658 (E.D. Pa. 2004). Additionally, a claim of negligence, unsuccessful medical treatment, or medical malpractice does not give rise to a § 1983 cause of action. See Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). Finally, § 1983 liability may not be imposed on the basis of *respondeat superior* principles, so that York County Hospital cannot be held liable solely on the basis of the conduct of its physicians. See Natale v. Camden County Correctional Facility, 318 F.3d 575, 578 (3d Cir. 2003). Therefore, the § 1983 claims against the York County Hospital and Dr. Jane Doe are subject to dismissal. Plaintiff, however, will be given an opportunity to amend his complaint if he is able to allege in good faith that Dr. Jane Doe is a state employee who acts under color of state law and that York County Hospital (a) is a state entity such that it acts under color of state law, and (b) that it had some policy or custom that caused the alleged deliberate indifference to serious medical needs.

B. Claims against the York County and Spring Garden Township Police Departments.

A municipality is liable under § 1983 only when a plaintiff can demonstrate that

the municipality itself, through the implementation of a policy or custom causes a constitutional violation. Monell v. New York City Department of Social Services, 436 U.S. 658, 691-95 (1978). There is no liability unless the policy or custom complained of itself violates the Constitution or when that policy, which may not be unconstitutional itself, is the “moving force” behind the constitutional tort of one of the employees of a municipality. Polk County v. Dodson, 454 U.S. 312 (1981). Liability for a municipality cannot be based on the theory of *respondeat superior* or any type of vicarious liability theory. Monell, 436 U.S. at 693-94. The municipality can only be liable if the city caused an employee to violate the constitutional rights of an individual through either an official policy or a well-settled custom. Id.; see also Boatner v. Hinds, 137 Fed. Appx. 499 (3d Cir. 2005)(“A government entity may be liable for the actions of its employees only if the plaintiff identifies a policy or custom that amounts to deliberate indifference to individual rights”).

Nothing in the facts alleged by Plaintiff suggests an official policy to use excessive force in arrest. Accordingly, Plaintiff has failed to present a viable claim against the municipal defendants. Plaintiff, however, will also be granted leave to file an amended complaint as to this claim.

C. Claims against the Commonwealth of Pennsylvania.

It is well settled that the Commonwealth of Pennsylvania is not a “person” as that term is used in § 1983, and therefore, is not subject to § 1983 suit. Hafer v. Melo, 502 U.S. 21,

25-27 (1991). Additionally, the Commonwealth of Pennsylvania is immune from suit in federal court under the Eleventh Amendment. Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989); Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 238 (3d Cir.2005). The Commonwealth of Pennsylvania has not waived its rights under the Eleventh Amendment. 42 Pa.C.S.A. § 8521(b) ("Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States."). Therefore, Plaintiff's § 1983 claims against the Commonwealth of Pennsylvania are legally frivolous and will be dismissed.

D. Stevenson's Claims of Malicious Prosecution.

Stevenson makes the general allegation that the defendants engaged in malicious prosecution when they arrested him for robbery, criminal conspiracy, theft by unlawful taking, receiving stolen property, simple assault, reckless endangerment of another person and false identification to law enforcement. (Dkt. Entry 1.) Yet, Plaintiff presents no facts to support such a claim. To succeed on a malicious prosecution claim under 42 U.S.C. § 1983, Stevenson must show that (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in his favor; (3) the proceeding was instituted without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing him to justice; and (5) he suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. See DiBella v. Borough of Beachwood, 407 F.3d 599, 603 (3d Cir.2005),

citing, Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir.2003)(stating without discussion that plaintiff needs to prove common law elements of malicious prosecution to succeed under § 1983 claim for malicious prosecution under Fourth Amendment). This claim fails for the simple reason that the Complaint does not allege whether the criminal proceedings have terminated in Stevenson's favor.

E. Claims Against York County Prison Warden Hogan and Officer Harbaugh Related to the Execution of the Search Warrant for a Blood Sample and Clothing.

The search warrant in question was authorized by a District Justice upon the submission of Officer Harbaugh's Affidavit of Probable Cause. (See Dkt. Entry 9.) Warden Hogan allegedly advised Spencer that if he did not comply with the search warrant he would face disciplinary action. (Dkt. Entry 1.) Plaintiff also alleges a claim of unlawful seizure with respect to his blood and clothing.

An "action taken pursuant to a facially valid court order receives absolute immunity from § 1983 lawsuits for damages." Hamilton v. Leavy, 322 F.3d 776, 782-83 (3d Cir.2003); see also Boatner v. Hinds, 137 Fed.Appx. 499, 502 (3d Cir. 2005). Officer Harbaugh was acting pursuant to a facially valid warrant to obtain from Plaintiff a blood sample and Plaintiff's clothing. Absent additional averments that the warrant was procured through knowingly false statements, or that the Warden acted improperly in telling Plaintiff that he had to comply, no viable section 1983 claim is presented.

F. Stevenson's Fourth Amendment claims against Officer Harbaugh and John Doe Officers.

Stevenson alleges that on June 24, 2005, he was "arrested and brutally beaten down by" Officer Harbaugh and ten other John Doe Officers. (Dkt. Entry 1.) He claims his property, business and residence were searched without his consent. (Id.) These claims (false arrest, false imprisonment, unlawful search, excessive force, and unlawful seizure) are cognizable under the Fourth Amendment and may proceed. Gibson v. Superintendent of N.J. Dep't. of Law & Pub. Safety-Division, 411 F.3d 427, 436 (3d. Cir. 2005); Heck v. Humphrey, 512 U.S. 477, 487 n.7 (1994).

V. Conclusion.

Plaintiff's claims against the Commonwealth of Pennsylvania are legally frivolous. As Stevenson does not have a cause of action under § 1983 as to the Commonwealth of Pennsylvania, allowing him to amend the Complaint as to it would be futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir.2002). However, the same cannot be said for Stevenson's § 1983 claims against the York County Hospital and Dr. Jane Doe, his claim against the York County and Spring Garden Township Police departments, his claim of malicious prosecution, or his Fourth Amendment claims relating to the execution of the search warrant. Stevenson may file an Amended Complaint as to these matters. The remainder of Stevenson's Fourth Amendment claims for false arrest, false imprisonment, unlawful search, excessive force, and unlawful seizure may proceed.

Stevenson is cautioned that the “amended complaint must be complete in all respects. It must be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed.” Young v. Keohane, 809 F.Supp. 1185, 1198 (M.D. Pa. 1992). Thus, he must not only amend his claims with respect to the health care Defendants, the local police departments and law enforcement officials, he must also reassert his surviving claims against Officer Harbaugh and the other John Does. His failure to file an appropriate Amended Complaint will result in the Court proceeding with the surviving claims as identified in this Memorandum and the dismissal of those claims found to be deficient as currently presented pursuant to 28 U.S.C. § 1915.

An appropriate order follows.

s/ Thomas I. Vanaskie

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

OMAR TREVOR STEVENSON,

Plaintiff,

V.

**COMMONWEALTH OF PENNSYLVANIA,
ET AL.,**

Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
84

CIVIL NO. 3:CV-05-1598

(CHIEF JUDGE VANASKIE)

ORDER

AND NOW, THIS 22nd DAY OF FEBRUARY, 2006, for the reasons set forth in the foregoing Memorandum, **IT IS HEREBY ORDERED THAT:**

1. The motion to proceed in forma pauperis (Dkt. Entry 5) is construed as a motion to proceed without full prepayment of fees and costs and the motion is GRANTED.
2. The Commonwealth of Pennsylvania is **DISMISSED**.
3. Plaintiff is GRANTED leave to amend the Complaint with respect to the claims against York County Hospital, Dr. Jane Doe, the York County Police Department and the Spring Garden Township Police Department, as well as the claim of malicious prosecution and unlawful search arising out of the execution of the search warrant.
4. Plaintiff shall file an amended complaint on or before March 13, 2006.

5. Failure to amend the Complaint will result in the Court proceeding on the Complaint as filed and the identified deficient claims will be dismissed pursuant to 28 U.S.C. § 1915(e). Service of process as to the surviving claims will be deferred until after Plaintiff files an amended complaint or notifies the Court that he does not intend to do so.

s/ Thomas I. Vanaskie

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania